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How will the Uniform Law affect your practice?

By Felicity Nelson | 28 May 2015

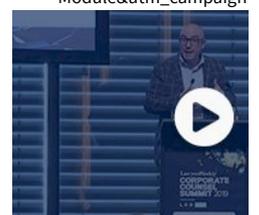


Changes to cost disclosure protocols and complaint time frames are among the Uniform Law provisions that will most affect lawyers, according to the NSW Legal Services Commissioner.

The Legal Profession Uniform Law Application Legislation Amendment Bill 2015, introduced into federal parliament in May, will unite almost three-quarters of the Australian legal profession under one regulatory umbrella.



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Speaking to *Lawyers Weekly*, NSW Legal Services Commissioner **John McKenzie (/appointments/16090-new-legal-services-commissioner-appointed-in-nsw)** (pictured) said there are a few legislative loose ends to tie up before the Uniform Law comes into effect, but that he was confident the July deadline would be met.

Mr McKenzie said there were major changes with which practitioners should familiarise themselves. He intends to work with legal bodies in coming months to raise awareness of the reforms and help the profession adjust.

“There are changes in relation to do’s and don’ts [around] legal fees and costs to clients,” he said. “Cost disclosure is being overhauled, to a certain extent.”

A “new fundamental principle” will govern billing practices under the Uniform Law.

“There must be informed consent by the client about the course that the matter is going to take and how it is going to be run, but also about the estimated costs,” Mr McKenzie said.

“If, during the course of the matter... [an] earlier estimate is no longer accurate but will be exceeded, then the lawyer has an ongoing responsibility to make sure they communicate that to the client.”

This means more than providing clients with “huge, multipage, finely printed cost-disclosure forms”, he continued.

Lawyers are required to make sure the client understands what is being proposed, for instance with a face-to-face or at least a telephone conversation.

“That is perhaps the biggest day-to-day change that the legal profession is going to experience once the Uniform Law comes into operation.”

The Uniform Laws will also put new thresholds in place for cost disclosure. Lawyers will not be required to formally notify clients about costs if estimated to be less than \$750. If matters fall between \$750 and the upper limit of \$3,000, there is a new short form for cost disclosure. Clients must be fully informed of fees that are estimated to exceed \$3,000.

“I underline the word estimate; no one can realistically give a formal and binding quote and they are not being asked to,” Mr McKenzie said.

Another change lawyers and clients should be aware of is the reduction in time limits around complaint processes.

“I don’t think it’s a big change,” he said. “There will be some shortening of timeframes. The idea is to try to expedite matters so there is a much earlier resolution and, hopefully, a much lower cost both to the practitioner in his or her time [and] to the client.”

A further reform, which will affect lawyers working in personal injury law, is the removal of the 2005 prohibition on advertising in NSW.

Victoria never introduced legislation restricting advertising by personal injury lawyers. NSW is removing this law by way of compromise to facilitate the union of the two jurisdictions.

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Marcus McCarthy

I don't think this problem should be co-opted by fixed fee vs estimate debate. Estimates are commonplace and all that can be given for certain work. The problem being raised by Grumpy and Cynica is that it is nigh on impossible for busy lawyers, particularly in sole practice, to effectively manage estimate revisions, especially if the test is now to be subjective. This legislation arguably makes a bad situation for lawyers even worse. What is being utterly forgotten by the regulators is that small sole practice has become almost commercially non-viable compared with other professional service businesses, and a large cause of this is the flawed costs assessment process with a unfair bias to clients and often imposing an unrealistic 'ongoing disclosure' (retrospective) benchmark. I know many good lawyers that have been unfairly 'burned' by this process. I don't see anything in the new Act that supports the 'business of law' that is already under immense and increasing pressure from market forces - in particular, competition from non lawyers delivering legal services and the rise of in-house counsel.

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Grumpy

John I rarely charge other than fixed fees if at all possible but this business of having to establish the state of mind of another human being, if that is what is required, means uncertainty, even if there be a fixed price. If there is a fixed price agreed for a clearly defined service why should there be any requirement at all for any disclosure? Or maybe I am reading too much into the article. I have for some time been a bit confused as to why fixed price arrangements are not simply completely carved out of disclosure obligations completely. I am also uncertain as to how a costs assessor would assess fees if there were a dispute on a fixed price arrangement - what does he do - go back to working out what is fair and reasonable on an hourly rate basis?

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Cynica

hear, hear.

And from a sole practitioner's point of view, the appointees to the Legal Services Council are, with the greatest respect, so far out of touch with reality that it has to be a joke. I am sure each of them are knowledgeable and proficient in their high and mighty positions on some committee of some sort, but for heavens sake what would any of them know about the daily practice of a solicitor? When would any of those people ever had, or indeed last had, a person come off the street wanting a legal service? Demanding it be done urgently but not wanting to pay for it because their cause is just and so they should not have to pay, or ignoring advice so as to get their deal done urgently but then when it turns sour - conveniently forgetting or denying the advice, and then complaining about the legal service so as to avoid paying, with willing legal services righteously taking up their cause?

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John Chisholm

"â€œI underline the word estimate; no one can realistically give a formal and binding quote and they are not being asked to,â€ Mr McKenzie said."Seriously? We will continue to adopt Grumpy's "nanny state legislation" belts and braces approach for so long as the majority of the profession prefers to give estimates rather than binding prices.

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Grumpy

So now we are to develop some mystical powers of clairvoyance which will enable us to enter into the consciousness of a client and determine if the client had a true understanding of the agreement, the costs estimates and how the costs estimates are likely to be varied are we? How on earth can we "make sure the client understands what is proposed". Does that really mean a face to face with the client initialling all the variables in the agreement? The cost will only be passed on in one form or another. For God's sake I wish the policy makers in this State would get real. It is a battle out there on the streets and this nanny state legislation only enables professional victims and entitled narcissistic the world owes me a living type clients another means of evading responsibility. Why does this profession have to do this when most others are not governed by this type of nonsense?

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